

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-878

CITY OF PEORIA, ILLINOIS AND VILLAGE OF PEORIA HEIGHTS, ILLINOIS

ADVERSE DISCONTINUANCE
PIONEER INDUSTRIAL RAILWAY CO.

REQUEST FOR RECONSIDERATION OF O.F.A.
AND
MOTION TO SUPPLEMENT PROTEST

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Dated: April 29, 2005.

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SURFACE TRANSPORTATION BOARD

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ADVERSE ABANDONMENT
PIONEER INDUSTRIAL RAILWAY CO.

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On July 23, 2004, Pioneer Industrial Railway Co. (“PIRY”) filed a Notice of Intent to File an Offer of Financial Assistance in this proceeding, to purchase the entire line at issue (which it has operated since February, 1998). On February 24, 2005, the Board held that “offers of financial assistance [“OFA’s”] will not be entertained in this proceeding.” That holding was based upon the Applicants’ misrepresentation that this proceeding is not abandonment, but merely a change of operators.

The City of Peoria and the Village of Peoria Heights (“Applicants”) have made clear in their filings that the “replacement operator,” Central Illinois Railroad Company (“CIRY”), which obtained Board authority to operate the entire Kellar Branch (See F.D. No. 34518, served June 28, 2004), has no intention of operating the entire line. Their admitted plan is to promptly abandon and scrap most of the line (6.29 of the 8.29 mile-long line, or over 75% of the line), without Board authority, and in violation of 49 U.S.C. §10903 (in this regard, the Petition for Exemption by CIRY is materially false and misleading). Since CIRY does not intent to actually operate the line, it should not be accorded the status of “replacement operator,” as it clearly is not.

In their April 5, 2005 Reply in Opposition to Protests, Applicants argue that, because there are no current shippers on the 6.29-mile portion of the Line that Applicants intent to abandon, it is, therefore, not an abandonment. There is no precedent whatsoever to support this incredible assertion. Moreover, as shown by the verified statement of Catherine Busch (attached hereto as “Exhibit 1”), there are potential customers on that segment, which PIRY desires to serve.

Apart from the existence of current customers, or potential customers, the abandonment of this segment would eliminate the possibility of any future customers locating on this segment, and would, for all but one of the line’s customers, sever the connection to the Tazewell & Peoria Railroad (“TZPR”), the area’s terminal switching carrier, which provides connections to eight line-haul carrier, thus severely reducing routing and marketing opportunities.

Applicants boldly state that in their Reply that the “The TZPR connection would not be severed [emphasis original]”. Applicants then admit, in the next paragraph, that the TZPR connection *would be severed for all but one of the current customers*, once the connection to the former-Union Pacific line is built.

Finally, Applicants allege that the standard the Board should apply is whether the adverse abandonment will harm the shippers, and not the PC&N standard that the Board just reaffirmed in Seminole Gulf Railway, L.P. –Adverse Abandonment - in Lee County, Fla. (AB-400 (Sub-No. 4), Served November 18, 2004). In that decision the Board stated that “the standard governing any application to abandon or discontinue service over a line of railroad, including an adverse abandonment or discontinuance, is whether the present or future PC&N require or permit the proposed abandonment or discontinuance,” Seminole Gulf Rwy. at Page 3. It is difficult to imagine a clearer statement by the Board.

As in Seminole Gulf Rwy. PIRY is actively operating the entire line. It has customers, and it is seeking additional customers. Whether a few miles of another recreational trail are constructed or not will have no affect whatsoever on the transportation system in the area. Trails carry no freight, and cannot realistically be expected to even have any effect on highway congestion, other than the possible increase in highway congestion that will likely result from the loss of the rail service. Denying shippers competitive rail service, on the other hand, is a significant and permanent loss to the transportation system, and not in accord with the Board's mission to preserve and promote rail service.

The "replacement" of PIRY service, with the proposed service of CIRY, would, therefore, clearly be harmful to the shippers, potential shippers, and the overall rail system. As was pointed out in PIRY's previous filing, almost all of PIRY's traffic to Pioneer Park is line-hauled by CN or BNSF. Those connections would be lost under the proposed CIRY service. One could not expect CIRY to market to any of the potential customers on the segment that is to be abandoned under their proposed "service" plan. PIRY, on the other hand, is an experienced, capable and willing operator of the entire line. PIRY, as shown by its previous Notice of Intent, is ready, willing, and able, to make an Offer of Financial Assistance to purchase and operate the entire line.

Applicants claim that the granting of this abandonment will not harm the shippers because there is a "replacement" carrier (CIRY) is a specious argument. It asks the Board to ignore the stated intent of the Applicants to abandon 75% of the line without authority, and would exalt form over substance to the point of making a mockery of Board procedures and the Interstate Commerce Act itself.

CONCLUSION

PIRY is the lawful and willing operator of this line. It is the only carrier that desires to operate the entire line. Applicants granted PIRY the right to operate this line “until terminated for cause....or by mutual consent”. They now want to ignore that grant and install an entity that will not object to their abandonment plan. CIRY is not a replacement carrier. It does not intend to operate this line. It intends to allow the Applicants to abandon and scrap over 75% of the line, without Board authority. Those are the undisputed facts.

Under the circumstances, the Board will not have another opportunity to preserve rail service on this line. PIRY respectfully requests that the Board permit this Supplement to its Protest, and that the Board exercise its authority and responsibility to preserve and promote rail service, and reconsider its decision of February 24, 2005, and allow PIRY to make an Offer of Financial Assistance to purchase the entire line.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper". The signature is fluid and cursive, with the first name "Daniel" and last name "LaKemper" clearly distinguishable.

Daniel A. LaKemper, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served on April 29, 2005, by e-mail on:

Thomas F. McFarland
Mcfarland@aol.com

And by United States Mail, first class, postage fully pre-paid, on April 29, 2005 upon:

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 S. LaSalle St., Suite 1890
Chicago, Illinois 60604



Daniel A. LaKemper, Esq.
General Counsel
Pioneer Industrial Railway Co.
Peoria, Illinois 61607
Tel.: (309) 697-1400

VERIFICATION

I, Guy L. Brenkman, President of Pioneer Industrial Railway Co., declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 29th day of April, 2005.

/s/ Guy L. Brenkman

EXHIBIT 1

VERIFIED STATEMENT OF CATHERINE BUSCH

My name is Catherine Busch and I am the Director of Marketing for Pioneer Industrial Railway Co. ("PIRY").

PIRY operates a line of 8.29 mile-long railroad in Peoria County, Illinois that interchanges with eight line-haul carriers, BNSF Railway, Union Pacific Railroad, CN, Norfolk Southern Railway, Iowa Interstate Railroad, Illinois & Midland Railroad, Toledo, Peoria & Western Railroad and Keokuk Junction Railway (via Tazewell & Peoria Railroad, "TZPR", the terminal switching carrier for the Peoria area).

Under the proposed service plan of Central Illinois Railroad Company, 6.29 miles of the line south of Pioneer Park would be abandoned.

There are several potential customers located on that 6.29-mile segment. I have actively, and continue to actively market to those customers, but am hampered by the City of Peoria's well-publicized threat of abandonment.

I quoted rates to one customer on this segment, in particular, and was told the rates were acceptable. PIRY was ready to provide the service, but the shipper severed contact with me. I am informed and believe that the City of Peoria pressured that shipper not to do business with PIRY because the City knew it would interfere with their abandonment plan. I am informed and believe that the City had contracts with that shipper that they could use as leverage to prevent him from shipping.

I continue to believe that, if the threat of abandonment were lifted, PIRY could substantially increase its business on the line, including adding customers on 6.29 mile segment that CIRY proposes to abandon.

VERIFICATION

I, Catherine Busch, declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 29st day of April, 2005.

/s/ Catherine Busch